

# Law Office of Nora J. Chorover

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RECEIVED

December 2, 2016

DEC - 7 2016

## **BY CERTIFIED MAIL**

OFFICE OF THE REGIONAL ADMINISTRATOR

Antonio J. Lorusso, President  
S.M. Lorusso & Sons, Inc.  
1260 Old North St  
Walpole, MA 02081  
Certified Mail #: 7014 3490 0000 7429 9333

Antonio J. Lorusso, Registered Agent  
S.M. Lorusso & Sons, Inc.  
331 West St  
Walpole, MA 02081  
Certified Mail #: 7014 3490 0000 7429 9913

RE : 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance with Federal Clean Water Act's Industrial Stormwater Discharge Requirements: 10 Grove Street, West Roxbury, MA

Dear Mr. Lorusso,

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against West Roxbury Crushed Stone Co. and S. M. Lorusso & Sons, Inc. ("West Roxbury Crushed Stone"). The subject of the action will be West Roxbury Crushed Stone's failure to properly monitor and control its polluted stormwater discharges to waters of the United States from its mineral mining and dressing facility in West Roxbury, Massachusetts (the "Facility"). By failing to adequately monitor and control its polluted stormwater discharges, West Roxbury Crushed Stone is violating the terms of EPA's Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity.<sup>1</sup>

## **BACKGROUND**

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface

<sup>1</sup> The General Permit was first issued in 1995 and most recently reissued in June 2015 in substantially similar form. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008), and reissued in 2015 pursuant to 80 Fed. Reg. 34403 (June 4, 2015).



December 2, 2016

waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

Clean Water Action will ask the Court to ensure West Roxbury Crushed Stone's future compliance with the Act, assess civil penalties in an appropriate amount,<sup>2</sup> award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director  
Clean Water Action  
88 Broad Street, Lower Level  
Boston, MA 02110  
(617) 338-8131  
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:

Nora J. Chorover  
Law Office of Nora J. Chorover  
11 Green Street  
Boston, MA 02130  
617-477-3550

## **WEST ROXBURY CRUSHED STONE'S VIOLATIONS AND DATES OF VIOLATIONS**

### **A. THE REQUIREMENTS OF THE ACT**

#### **1. Pollutant Discharges Without a Permit are Illegal.**

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the federal Environmental Protection Agency ("EPA") under the National Discharge Elimination System ("NPDES").

#### **2. Mineral Mining and Dressing Facilities Must Comply with EPA's General Industrial Stormwater Permit.**

In order to minimize polluted stormwater discharges from certain categories of industrial facilities, EPA has issued a general industrial stormwater permit (the "Permit"). Mineral mining

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<sup>2</sup> The Statute authorizes the Court to assess a penalty of *up to* \$37,500 a day for each violation. See 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).



and dressing facilities are subject to the requirements of this Permit.<sup>3</sup> Mineral mining and dressing facilities which carry on other types of activities also subject to the requirements of the Permit must also comply with any sector-specific requirements for such co-located industrial activity.<sup>4</sup>

3. Mineral Mining and Dressing Manufacturing Facilities Must Develop and Implement a Stormwater Pollution Prevention Plan ("SWPPP").

An owner or operator (hereafter referred to as "operator") of a facility subject to the requirements of the Permit must prepare a SWPPP before being authorized to discharge under the Permit.<sup>5</sup> The SWPPP must be "prepared in accordance with good engineering practices"<sup>6</sup> and, among other things,

- identify potential sources of pollution at the facility;<sup>7</sup>
- describe and ensure implementation of control measures that are technologically available and economically practicable and achievable in light of best industry practice;<sup>8</sup> and
- set forth specific procedures to assure compliance with effluent limitations and monitoring/inspection requirements of the Permit.<sup>9</sup>

4. Mineral Mining and Dressing Manufacturing Facilities Must Comply with the Terms of the Permit.

The Permit requires mineral mining and dressing facilities to, among other things:

- a. ensure that stormwater discharges meet applicable water quality standards;<sup>10</sup>
- b. reduce and/or eliminate pollutants to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice;<sup>11</sup>
- c. implement specific best management practices set forth in the Permit for mineral mining and dressing facilities;<sup>12</sup>
- d. monitor stormwater discharges for compliance with benchmark limitations and effluent limitations applicable to sand and gravel facilities;<sup>13</sup>
- e. perform regular facility and stormwater inspections;<sup>14</sup>

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<sup>3</sup> Permit, Appendix D, pg. D-3.

<sup>4</sup> Permit, pg. 101.

<sup>5</sup> Permit, Section 5 and Section 8.J.6.

<sup>6</sup> Permit, pg. 30 (referring to "control measures").

<sup>7</sup> Permit, pgs. 32-33.

<sup>8</sup> Permit, pgs. 14, 33-34.

<sup>9</sup> Permit, pgs. 34-36.

<sup>10</sup> Permit, pg. 20 ("Your discharge must be controlled as necessary to meet applicable water quality standards.").

<sup>11</sup> Permit, pg. 14.

<sup>12</sup> Permit, pg. 101-113.

<sup>13</sup> Permit, pg. 113-114. West Roxbury Crushed Stone was required to monitor for Total Suspended Solids ("TSS") for compliance with benchmark limits. Any mine dewatering discharges were subject to effluent limitations for levels of pH. If the company performs sand mining, its mine dewatering discharges must comply with pH effluent limits.

<sup>14</sup> Permit, pgs. 22-26.



- f. report on monitoring and inspections to EPA by specified deadlines;<sup>15</sup> and
- g. comply with those permit conditions applicable to permittees in Massachusetts, including but not limited to:
  - i. submission of monitoring results to the Regional Office of the Massachusetts Department of Environmental Protections (“MADEP”) for the MADEP Region in which the Facility is located, where the monitoring identifies exceedences of effluent limits or benchmarks for which monitoring is required under the Permit, and
  - ii. where effluent limits and/or benchmarks are exceeded, submission to the MADEP Regional Office of any follow-up monitoring and a description of the corrective actions required and undertaken to meet those effluent limits and/or benchmarks.<sup>16</sup>

**B. WEST ROXBURY CRUSHED STONE’S VIOLATIONS AND DATES OF VIOLATIONS**

The following violations of the Act are set forth on Exhibit B. These violations have occurred on a daily basis for the last five years and are continuing to occur.<sup>17</sup>

- a. failure to prepare and implement an adequate SWPPP;
- b. failure to ensure that stormwater discharges from the Facility will not cause or have the reasonable potential to cause or contribute to a violation of water quality standards;
- c. failure to implement adequate control measures;
- d. failure to adequately monitor for compliance with benchmark limitations; and
- e. failure to report appropriate monitoring results for the Facility to EPA by the specific deadlines.

Whatever measures West Roxbury Crushed Stone may have put in place to monitor and control stormwater pollution are not sufficient to comply with the Permit as is evident from the excessive amount of pollutants being discharged to a catch basin on Grove Street outside of the Facility. The catch basin is part of the City of Boston’s storm drain system, which flows to the Charles River and ultimately to Boston Harbor. The following photograph shows excessive sediment on and around the catch basin. Based on visual observations, the sediment was flowing off of the Facility and into the catch basin.

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<sup>15</sup> Permit, pgs. 47-51.

<sup>16</sup> Permit, pg. 170.

<sup>17</sup> Clean Water Action believes that the violations set forth in this Section B have occurred on each day of the last five years, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through November 16, 2016 are set forth on Exhibit A hereto. The complaint, when filed, will set forth additional rain dates since November 16, 2016.



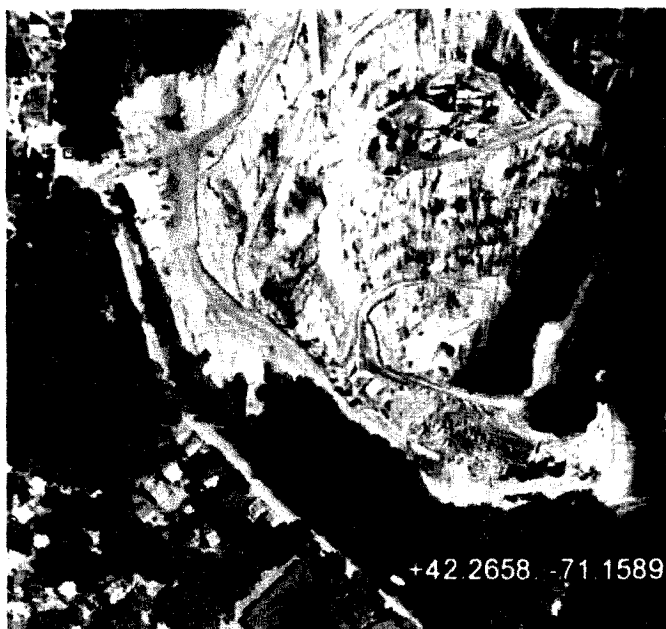


December 2, 2016



[Catch Basin on Grove Street, outside of West Roxbury Crushed Stone] Photographer: Nora Chorover date: [10.19.2016]

Moreover, West Roxbury Crushed Stone has informed EPA that it performs mine dewatering, and that its dewatering water is discharged through an outfall located at the following coordinates: 42.268626, -71.161572. The following aerial photograph shows the approximate location of these coordinates. Upon visual inspection, CWA was unable to find any outfall at the location depicted.





West Roxbury Crushed Stone Co.

Page 6

December 2, 2016

**CONCLUSION**

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Choroyer

Attorney for

CLEAN WATER ACTION

cc: (by certified mail)

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C T Corporation System, Registered Agent  
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Boston, MA 02110  
Certified Mail # 7014 3490 0000 7429 9340



**EXHIBIT A**  
**DAYS BETWEEN**  
**NOVEMBER 11, 2011 AND NOVEMBER 6, 2016**  
**ON WHICH STORMWATER FROM FACILITY**  
**DISCHARGED TO WATERS OF THE UNITED STATES**

November 2011:	11, 17, 23, 30
December 2011:	7, 8, 22, 23, 28
January 2012:	12, 13, 17, 22, 27, 28
February 2012:	25
March 2012:	1, 2, 3
April 2012:	2, 13, 23
May 2012:	2, 10, 16, 23
June 2012:	2, 3, 5, 9, 13, 14, 23, 24, 26
July 2012:	19, 25, 29
August 2012:	1, 2, 11, 16
September 2012:	5, 9, 19, 29
October 2012:	20, 29, 30, 31
November 2012:	8, 14, 28
December 2012:	10, 17, 18, 22, 27, 28, 30
January 2013:	16, 31
February 2013:	10, 20, 24, 25, 27, 28
March 2013:	7, 8, 9, 13, 19, 20
April 2013:	12, 13, 20, 24
May 2013:	9, 10, 24, 25, 26, 29, 30
June 2013:	4, 8, 11, 12, 14, 18, 19, 27, 28
July 2013:	12, 24, 26, 27
August 2013:	10
September 2013:	2, 13, 14, 22
October 2013:	7
November 2013:	8, 18, 27, 28
December 2013:	2, 7, 10, 15, 18, 24, 30
January 2014:	3, 6, 12, 15, 19, 22
February 2014:	4, 5, 6, 14, 16, 19, 20, 21, 22
March 2014:	13, 20, 29, 30, 31
April 2014:	5, 8, 16, 24, 27
May 2014:	1, 17, 23, 28
June 2014:	4, 6, 11, 14, 17, 26
July 2014:	5, 15, 17, 28, 29
August 2014:	13, 14
September 2014:	1
October 2014:	2, 12, 17, 22, 23, 24
November 2014:	2, 3, 7, 14, 17, 25, 27
December 2014:	3, 6, 7, 9, 10, 11, 17, 24, 25
January 2015:	4, 24, 25, 28
February 2015:	2, 3, 8, 9, 10, 16, 22
March 2015:	2, 4, 15, 27, 29
April 2015:	4, 9, 21
May 2015:	20, 31
June 2015:	1, 2, 16, 21, 22, 28, 29
July 2015:	1, 2, 10, 18



August 2015:	5, 12, 16
September 2015:	11, 30
October 2015:	1, 10, 29
November 2015:	11, 20, 23
December 2015:	3, 15, 18, 24, 29, 30
January 2016:	11, 16, 17, 18, 24
February 2016:	4, 5, 6, 9, 16, 17, 24, 25
March 2016:	3, 11, 15, 16, 21, 29
April 2016:	3, 5, 8, 13, 27
May 2016:	3, 5, 30, 31
June 2016:	6
July 2016:	2, 5, 19
August 2016:	11, 14, 22
September 2016:	6, 20, 27
October 2016:	1, 2, 10, 18, 22, 28, 31
November 2016:	16





**EXHIBIT B**  
**TABLE OF WEST ROXBURY CRUSHED STONE'S VIOLATIONS**

Nov. 2011 to the Present

Requirements applicable to Sector J-Non-Metallic Mineral Mining and Dressing

<u>Type of Violation</u>	<u>Quarter</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Prepare and Implement a SWPPP	n a	n a	Nov. 22, 2011	Present
Failure to Ensure Discharges Will Not Cause/Contribute to Violation of Water Quality Standards	n a	n a	Nov. 22, 2011	Present
Failure to Implement Adequate Control Measures	all	All Parameters <sup>1</sup>	July 31, 2010	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Nov.-Dec. 2011	All Parameters	Dec. 31, 2011	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Nov.-Dec. 2011	All Parameters	Jan. 30, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan.-Mar. 2012	All Parameters	Mar. 31, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan.-Mar. 2012	All Parameters	Apr. 31, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr.-Jun. 2012	All Parameters	Jun 30, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr.-Jun. 2012	All Parameters	Jul 30, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept. 2012	All Parameters	Sept. 30, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept. 2012	All Parameters	Oct. 30, 2012	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct.-Dec. 2012	All Parameters	Dec. 31, 2012	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct.-Dec. 2012	All Parameters	Jan. 30, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan.-Mar. 2013	All Parameters	Mar. 31, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan.-Mar. 2013	All Parameters	Apr. 31, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr.-Jun. 2013	All Parameters	Jun 30, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr.-Jun. 2013	All Parameters	Jul 30, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept. 2013	All Parameters	Sept. 30, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept. 2013	All Parameters	Oct. 30, 2013	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct.-Dec. 2013	All Parameters	Dec. 31, 2013	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct.-Dec. 2013	All Parameters	Jan. 30, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan.-Mar. 2014	All Parameters	Mar. 31, 2014	Present

<sup>1</sup> Per Section 8.J of the 2015 Multi-Sector General Stormwater Permit, West Roxbury Crushed Stone Company was required to monitor and control the presence of Total Suspended Solids (TSS).



<u>Type of Violation</u>	<u>Quarter</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Report Appropriate Results of Benchmark Monitoring	Jan.-Mar. 2014	All Parameters	Apr. 31, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr.-Jun 2014	All Parameters	Jun 30, 2014	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr.-Jun 2014	All Parameters	Jul 30, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept. 2014	All Parameters	Sept. 30, 2014	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept. 2014	All Parameters	Oct. 30, 2014	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct.-Dec. 2014	All Parameters	Dec. 31, 2014	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct.-Dec. 2014	All Parameters	Jan. 30, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan.-Mar. 2015	All Parameters	Mar. 31, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan.-Mar. 2015	All Parameters	Apr. 31, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr.-Jun 2015	All Parameters	Jun 30, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr.-Jun 2015	All Parameters	Jul 30, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept. 2015	All Parameters	Sept. 30, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept. 2015	All Parameters	Oct. 30, 2015	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Oct.-Dec. 2015	All Parameters	Dec. 31, 2015	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Oct.-Dec. 2015	All Parameters	Jan. 30, 2016	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jan.-Mar. 2016	All Parameters	Mar. 31, 2016	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jan.-Mar. 2016	All Parameters	Apr. 31, 2016	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Apr.-Jun 2016	All Parameters	Jun 30, 2016	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Apr.-Jun 2016	All Parameters	Jul 30, 2016	Present
Failure to Adequately Monitor for Compliance with Benchmark Limits	Jul-Sept. 2016	All Parameters	Sept. 30, 2016	Present
Failure to Report Appropriate Results of Benchmark Monitoring	Jul-Sept. 2016	All Parameters	Oct. 30, 2016	Present

